

CRIMINAL LAW:

Construction of Section 561.440, RSMo 1949.

JOHN M. DALTON
XXXXXXXXXX



February 19, 1953

XXXXXXXX

Honorable Leon McAnally
Prosecuting Attorney
Dunklin County
Kennett, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion which reads:

"I would like your opinion as to whether a person can be properly prosecuted under Section 561.440 R.S. Mo. 1949 who writes an ordinary check drawn on a bank and signs fathers' name and underneath fathers signature writes following words 'BY Son'. The check is made 'Pay to the order of Cash' and passed for a valuable consideration. The check is turned down by the bank because of unauthorized signature."

Your request requires a construction of Section 561.440, RSMo 1949, which reads:

"Any person not authorized by law who shall put in circulation as a circulating medium any note, bill, check, ticket or other instrument of writing, purporting or evidencing that any money will be paid to the receiver, bearer or holder thereof or to any person by any name or description whatsoever or that it will be received in payment of debts or be used as a currency or medium of trade, in lieu of money or who shall vend, pass, receive or offer in payment any such note, bill, check, ticket or other such currency shall upon conviction be adjudged guilty of a misdemeanor."

While the foregoing statute is somewhat ambiguous, we cannot believe that it is authority for prosecuting the party referred to in your request for writing such a check. Certainly if such statute was intended to be applicable in this

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instance, the Legislature would have been more specific, but by using such language, it left the impression that it applies only to those persons who unlawfully issue and pass or circulate bank notes, checks, currency, exchange, treasury notes, money, etc., that may be used as a currency or medium of trade in lieu of money. We cannot conceive that if it was the legislative intent to include such practice under the circumstances referred to in your request that it would not be more specific as it has in other instances when enacting provisions such as those making it a crime for uttering a forged check, obtaining money by false pretenses, obtaining money by means of a bogus check or checks drawn when funds are insufficient.

The statute in question does not make it a crime for writing a check on another's account, or on an unauthorized signature; but the offense is putting such instruments in circulation as a circulating medium, or to be used as a currency or medium of trade in lieu of money.

In *State v. James*, 63 Mo. 570, l.c. 575, the court said, relative to Wagner Statute No. 210, Section 1, which is practically in the same form as the statute in question:

"Under the statutes it is not a question of intention; the offense consists in creating or putting in circulation as a circulating medium."

It would be presumptuous and absurd for us to hold that anyone who writes a check may be prosecuted under the foregoing statute. If we are to hold this party has committed an offense punishable under said statute, then the same might be true of anyone else writing checks regardless of their validity.

A well established rule of statutory construction is that penal statutes shall be strictly construed in those parts which are against persons charged with their violations, but liberally construed in those parts which are in their favor. See *State v. Taylor*, 133 S.W. (2d) 336, 345 Mo. 325. The foregoing decision further holds that no person should be made subject to penalty of a criminal statute by implication, and when doubt arises concerning their interpretation, such doubts are to be weighed only in favor of the accused.

Currency has been defined as not always money, but it is anything that calculates on its own credit as a medium of exchange, such as bank notes, bills of exchange, government security notes issued by or under authority of the Federal government.

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The court, in *People v. O'Campo*, 71 N.E. (2d) 375, 1.c. 377, 330 Ill. App. 401, defines currency as follows:

" * * * In *Webster v. Pierce & Baxter*, 35 Ill. 158, our Supreme Court, speaking through Mr. Justice Breese, said (page 163): 'Currency, we have decided, is coin, or such bank notes as pass freely in commercial transactions as money and regarded nearly equivalent to coin.' The author of the article on 'Currency' in 25 C.J.S., page 33, states: 'Currency is the circulating medium, and is generally used to indicate the aggregate of coin, bills, notes, etc., in circulation as, a metallic currency, a mixed currency, and paper currency, etc. Aside from extrinsic circumstances or a peculiar and acquired meaning, currency is that which circulates current as money; if gold and silver circulate as money, they are currency; if bank notes circulate as money, they are currency; thus currency may be composed of either coin or paper or both.' We take judicial notice of the fact that 80¢ in U. S. currency consisting of 50¢, 25¢ and 5¢ is metallic currency of the United States of America, made up of a 50 cent silver coin, a 25 cent silver coin and a 5 cent nickel coin. Under the authorities the word 'currency' appropriately describes coins as well as 'paper' money. * * * "

CONCLUSION

Therefore, it is the opinion of this department in view of the foregoing under the facts stated in your request, said party committed no offense under Section 561.440, RSMo 1949,

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by merely writing a check payable to order of cash on an unauthorized signature.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Aubrey R. Hammett, Jr.

Yours very truly,

JOHN M. DALTON

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